Iron Workers Local 433, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO *and* Otis Elevator Company, a subsidiary of United Technologies *and* Marnell Corrao Associates, Inc. *and* Dover Elevator Company and International Union of Elevator Constructors, Local 18, Party to the Contract

District Council of Iron Workers of the State of California and Vicinity; Iron Workers Local 433, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO *and* Otis Elevator Company, a subsidiary of United Technologies and International Union of Elevator Constructors, Local 18, Party to the Contract. Cases 31–CD–313, 31–CD–314, 31–CD–315, 31–CD–316, and 31–CD–319

October 21, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On October 30, 1991, Administrative Law Judge Jerrold H. Shapiro issued the attached decision. The Respondents filed exceptions and a supporting brief, and Charging Party Otis Elevator (Otis) filed exceptions, a supporting brief, and a brief in answer to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, as modified, and to adopt the recommended Order as modified and set forth in full below.

1. The judge found, inter alia, that Respondent District Council of Iron Workers of the State of California and Vicinity (Respondent Council) violated Section 8(b)(4)(ii)(D) of the Act by filing on behalf of itself and Respondent Iron Workers Local 433 (Respondent Local) a ''Petition to Confirm Arbitration Awards'' in the California Superior Court, and by thereafter maintaining that lawsuit in the United States District Court of the Central District of California. The judge found that the purpose of these lawsuits was to enforce the arbitration decisions requiring Otis to pay monetary damages, with an object of forcing or requiring Otis to assign, contrary to this Board's Decision and Determination of Dispute,[1] the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by Iron Workers Local 433, the Respondent Local, rather than to employees represented by International Union of Elevator Constructors, Local 18.

The Respondents contend that the Respondent Council is not a proper party to this case because it did not claim the work in dispute, nor did it participate in the 10(k) proceeding. The Respondents also contend that the Respondent Local did not at any time have an agency relationship with the Respondent Council, and that it was improper for the judge to have relied on an agency theory because the case was neither submitted to the judge nor litigated on that theory. For all these reasons, the Respondents contend, the Respondent Council cannot be found to have violated Section 8(b)(4)(D). We disagree and affirm the judge's findings for the reasons stated by him, as amplified below.

It is undisputed that the Respondent Council filed the arbitration confirmation petition in the Superior Court against Otis, and that when Otis succeeded in having that lawsuit removed to the United States District Court, the Respondent Council filed a ''Cross Petition for Confirmation of Arbitration Award'' in the latter court against Otis.[2] Both of these lawsuits were filed on behalf of the Respondent Local and thus apparently with the latter's full knowledge, consent, and approval; and both suits seek enforcement of arbitration awards that were based on grievances filed by the Respondent Local against Otis concerning Otis' assignment of the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects, the very same work assignments that were the subject of the jurisdictional dispute in the 10(k) proceeding to which the Respondent Local has from the outset of that proceeding been a party. Indeed, it was the Respondent Local's unlawful conduct in furtherance of its claims to the disputed work that gave rise to the cases before us.

In light of the above, it is immaterial that the Respondent Council was not a participant in the events leading up to the 10(k) proceeding or in that proceeding itself. By filing lawsuits to enforce arbitration decisions in favor of the Respondent Local that conflict with the Board's previously made award of the work, the Respondent Council has acted in furtherance of the Respondent Local's continuing claims for the disputed work and its refusal to comply with the 10(k) award. At the very least, if not embracing the Respondent Local's interests as its own, it has acted as the agent of the latter.[3] Thus, the Respondent Council can no

[1] Reported at 297 NLRB 964 (1990). The initial lawsuit was filed a month after the Decision and Determination of Dispute.

[2] The Respondent Local filed a similar cross-petition in the Federal district court. Relying on the same reasons he used to find the Respondent Council's like conduct to be unlawful, the judge found that the Respondent Local's lawsuit violated Sec. 8(b)(4)(ii)(D) of the Act. We affirm.

[3] We find no merit to the Respondents' contention that they were denied due process by the judge's reliance on agency principles, to find the violation against the Respondent Council. In responses to

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more escape the consequences of its coercive conduct in filing and maintaining the lawsuits than could its principal, the Respondent Local, who we have found violated Section 8(b)(4)(D) by the identical conduct of filing a similar suit in the district court. The Respondent Council has therefore, by its actions on behalf of the Respondent Local, brought itself within our jurisdiction to resolve the issues raised by the complaint in Case 31–CD–319.[4] Accordingly, we agree with the judge that although the Respondent Council was not a party to the Board's 10(k) determination, it is a proper party to these proceedings because the awards the Respondent Council was asking the courts to enforce were for the benefit of the Respondent Local and it was acting as an agent of the Respondent Local in pursuing the lawsuits.[5]

2. The Respondents contend that their continuing to pursue collection of pay-in-lieu awards for employer conduct occurring before the Board's 10(k) award issued is not a violation of the Act because it is only unlawful to pursue such awards for work performed after the Board's determination has issued. The Respondents are mistaken in their contention.

In *Longshoremen ILWU Local 7 (Georgia Pacific)*,[6] the Board held that a labor organization does not violate Section 8(b)(4)(D) by filing grievances seeking ''in lieu of'' pay before the Board makes a 10(k) determination. However, *Georgia Pacific II* left intact the principle that time-in-lieu claims, including awards, that conflict with, and are filed or pursued subsequent to, a 10(k) award violate Section 8(b)(4)(ii)(D). *Longshoremen ILWU Local 13 (Sea-Land Service)*, 290 NLRB 616 (1988), enfd. 884 F.2d 1407, 1413–1414 (D.C. Cir. 1989). Accord: *Roofers Local 30 (Gundle Construction)*, 307 NLRB 1429 (1992).[7] That principle in turn rests on the undisputed proposition that a Board 10(k) award takes precedence over any conflicting arbitral award (*Carey v. Westinghouse*, 375 U.S. 261 (1964)), and that allowing the losing party in a 10(k) dispute to pursue payments for work that the Board awarded to employees other than those involved in the grievance necessarily subverts the Board's 10(k) award. *Sea-Land*, supra.

Here, the Respondents filed all of their lawsuits seeking enforcement of arbitral awards that are inconsistent with the Board's 10(k) decision, after the Board's Determination of Dispute issued. It makes no difference that the awards seek payment for work performed before the Board's 10(k) determination because the issue here is not when the work was performed, but whether the claims for ''pay-in-lieu'' were pursued after an adverse Board 10(k) determination covering the work subject to those claims had been made.[8] In

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the judge's predecision Order to Show Cause as to why the consolidated complaint should not be dismissed insofar as it charged the Respondent Council with having violated Sec. 8(b)(4)(D), both the General Counsel and counsel for Otis argued agency as grounds for finding a violation. Further, the Respondent Council is a named party in the charge in Case 31–CD–319 and the second amended complaint that contains allegations addressed to the legality of its conduct in question. It also is a party to the stipulation of facts, which includes copies of its court petitions and related papers as exhibits as well as factual statements relating to its petition to confirm arbitration awards. In these circumstances, we find that the Respondents were on notice of the agency issue, and that the issue was fully litigated.

[4] In addition to the agency ground, the judge found that the Respondent Council was properly named as a respondent in the complaint issued in Case 31–CD–319, in order to enable the Board, pursuant to the authority vested in it by Sec. 10(k) of the Act ''to hear and determine the dispute out of which such unfair labor practice shall have arisen,'' to bring about compliance with its Decision and Determination of Dispute that awarded the disputed work to employees represented by Local 18, rather than to those represented by the Respondent Local. In effect, the judge reasoned that, by filing its lawsuit, the Respondent Council made itself a party to the ultimate resolution of the issues in these proceedings, in accordance with the Board's 10(k) award of the disputed work. We agree.

[5] In view of the foregoing, we find merit in Otis' exceptions that the cross-petition for confirmation of arbitration award that the Respondent Council filed in the district court on behalf of the Respondent Local violated Sec. 8(b)(4)(ii)(D), and that the Respondent Council should be required to comply with the same remedial relief ordered against the Respondent Local in connection with the latter's unlawful filing of its similar cross-petition. Although the judge found that the state and Federal petitions were coercive and unlawful because of the timing of their filing in relation to our Decision and Determination of Dispute, he did not specifically identify the Respondent Council's cross-petition as being included in those findings, and his Conclusions of Law make no reference to it. Similarly, we find merit in Otis' exception that the relief ordered against the Respondent Council for its filing the petition to confirm arbitration awards should be extended to include the Respondent Local as the Respondent Council's principal. Accordingly, we shall modify the judge's Conclusions of Law 6 and 7 and his recommended Order and notices to reflect these modifications.

[6] 291 NLRB 89, 92–93 (1988) (*Georgia Pacific II*).

[7] Thus, in *Georgia Pacific II*, although the union was not found in violation of the Act for having filed in-lieu claims prior to the award, the cease-and-desist order required it to withdraw any claims in conflict with the award and to reimburse the companies against which the grievances had been filed for any claims paid following the issuance of the Board's 10(k) determination. 291 NLRB at 94. The order did not distinguish between claims covering work done before the date of the award and work done afterwards, nor would it have been logical to make this distinction since Board 10(k) awards cover the disputed work when it was done and are not limited to work of the kind in dispute that might occur after the award's issuance. As the judge in the present case correctly observed, ''requiring Otis to comply with [the arbitration awards at issue here] will be no less inconsistent with the Board's award'' than it would have been had ''the awards included 'time-in-lieu' payments for the periods before *and* after the Board's 10(k) determination.''

[8] We find *Longshoremen ILWU Local 151 (Port Townsend Paper Corp.)*, 294 NLRB 674 (1989), distinguishable. There, unlike the instant case, the parties had a collective-bargaining agreement covering the work in dispute, and the union resorted to its grievance-arbitration procedures under its contract and did not engage in other self-help acts such as threats, picketing, or other job actions. The Board held that it was not a violation of Sec. 8(b)(4)(D) for a union to have filed arguably meritorious pre-10(k) grievances and that the Union's alleged implied threats did not rise to the level of an 8(b)(4)(D) violation. Therefore, the Board vacated its earlier Deci-

view of the foregoing, and for the reasons stated in *Roofers Local 30 (Gundle Construction)*, supra, we reject our dissenting colleague's position that the Respondents may lawfully pursue an arbitration award which was contrary to the Board's 10(k) determination for work performed prior to, and which was the subject of, that Board determination.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 6.

''6. By filing a petition to confirm arbitration awards in the Superior Court of the State of California in and for the County of San Francisco and by maintaining that lawsuit in the United States District Court for the Central District of California, for the purpose of enforcing the Board of Adjustment decisions requiring Otis to pay monetary damages pursuant to the Board of Adjustment Decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by Respondent Local, rather than to employees represented by Local 18, the Respondents have violated Section 8(b)(4)(ii)(D) of the Act.''

2. Substitute the following for Conclusion of Law 7.

''7. By each filing and maintaining a cross-petition for confirmation of arbitration award in the United States District Court for the Central District of California, for the purpose of enforcing the Board of Adjustment Decisions requiring Otis to pay monetary damages pursuant to the Board of Adjustment Decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by the Respondent Local, rather than to employees represented by Local 18, the Respondent Local and the Respondent Council have violated Section 8(b)(ii)(D) of the Act.''

ORDER

The National Labor Relations Board orders:

A. Respondent Iron Workers Local 433, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, Commerce California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging any individual employed by Otis, Marnell Corrao, or Dover or by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or to perform any services, where an object thereof is to force or require Otis or Dover to assign the work of installing elevator fronts to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18.

(b) In any manner threatening, coercing, or restraining Otis, Marnell Corrao, or Dover or any person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Otis or Dover to assign the work of installing elevator fronts to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by, Local 18.

(c) Maintaining after March 21, 1990, a petition to confirm arbitration awards in the Superior Court of the State of California in and for the County of San Francisco, a petition for conformation of arbitration award in the United States District Court for the Central District of California (Case No. 90–2919), and a cross-petition for confirmation of arbitration awards in *Otis Elevator Company, a subsidiary of United Technologies v. District Council of Ironworkers of the State of California and Vicinity, Ironworkers Union Local 433*, Case No. 90–2355 in the United States District Court for the Central District of California, for the purpose of enforcing the Board of Adjustment Decisions requiring Otis to pay monetary damages pursuant to the Board of Adjustment Decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by the Respondent Local, rather than to employees represented by Local 18.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw the above-described petition and cross-petition for confirmation of arbitration awards and cease attempting to enforce the Board of Adjustment Decisions.

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sion and Determination of Dispute and found that the Union's ''in-lieu-of'' claims filed subsequent to the vacated 10(k) award did not violate the Act. Compare *Roofers Local 30 (Gundle Construction)*, supra (finding violation where union had triggered 10(k) procedures through its picketing and had resorted to peaceful arbitral and judicial channels only after the unfair labor practice that had been charged had been filed in response to its picketing).

The present case is also distinguishable from *Carpenters Local 33 (AGC of Massachusetts)*, 289 NLRB 1482 (1988), which involved a lawsuit, filed by a labor organization which had not engaged in picketing, and brought against a general contractor to enforce a signatory subcontracting clause, with no action taken directly against the subcontractor who assigned the work covered by the Board's 10(k) award. See *Roofers Local 30 (Gundle Construction)*, supra at fn. 4.

(b) Post at its business office, union hall, or any places where it customarily posts notices to its members copies of the attached notice marked ''Appendix A.''[9] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent Local's authorized representative, shall be posted by the Respondent Local immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Local to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Local has taken to comply.

B. Respondent District Council of Iron Workers of the State of California and Vicinity, Burlingame, California, its officers, agents, and representatives, shall

1. Cease and desist from maintaining after March 21, 1990, a petition to confirm arbitration awards in the Superior Court of the State of California in and for the County of San Francisco, a petition for confirmation of arbitration award in the United States District Court for the Central District of California (Case No. 90–2919), and a cross-petition to confirm arbitration awards in *Otis Elevator Company, a subsidiary of United Technologies v. District Council of Ironworkers of the State of California and Vicinity, Ironworkers Union Local 433*, Case No. 90–2355 in the United States District Court for the Central District of California, requiring Otis to pay monetary damages pursuant to the Board of Adjustment Decisions, for the purpose of enforcing the Board of Adjustment Decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by the Respondent Local, rather than to employees represented by Local 18.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw the above-described petition to confirm and cross-petition to confirm arbitration awards and cease attempting to enforce the Board of Adjustment Decisions.

(b) Post at at its business office, union hall, or any places where it customarily posts notices to its membes copies of the attached notice marked ''Appendix B.''[10] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent Council's authorized representative, shall be posted by the Respondent Council immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Council to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Council has taken to comply.

MEMBER DEVANEY, dissenting in part.

Contrary to my colleagues, I would find that the Respondents' filing and maintenance of court petitions to confirm arbitration awards requiring Otis Elevator Company to pay ''time-in-lieu'' payments did not violate Section 8(b)(4)(D) of the Act.[1]

On November 11, 1989, Respondent Iron Workers Local 433 filed two grievances charging Otis with violating the California Iron Workers Agreement by employing elevator constructors rather than ironworkers to install elevator fronts at two building projects in Los Angeles. Under the grievance arbitration provisions of that agreement, Local 433's grievance was heard by a board of adjustment. On December 12, 1989, the board of adjustment issued a decision sustaining the grievances and ordering Otis to ''pay the top men on the out of work list for all hours worked'' at the two projects. On April 25, 1990, Respondent District Council of Iron Workers of the State of California and Vicinity filed a petition to confirm the arbitration awards in state court. After Otis removed the lawsuit to Federal court, Local 433 filed a cross-petition to confirm the arbitration awards. In the meantime, in a 10(k) proceeding prompted by Local 433's picketing in September and October 1989, the Board issued a decision on March 21, 1990, awarding the disputed work of installing elevator fronts to employees represented by International Union of Elevator Constructors, Local 18, rather than to employees represented by Respondent Local 433.

In considering whether the Respondents' filing and maintenance of the petitions to enforce the arbitration awards violated Section 8(b)(4)(D), the judge found that there was no evidence that the arbitration awards covered work performed after the Board's 10(k) deter-

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[10] See fn. 9, above.

[1] Like my colleagues, I agree with the judge's conclusion that Respondent Iron Workers Local 433 violated Sec. 8(b)(4)(D) of the Act by engaging in picketing and threatening to picket and to disrupt work with an object of forcing Charging Parties Otis Elevator Company and Dover Elevator Company to assign the work of installing elevator fronts to employees represented by Local 433 rather than to employees represented by International Union of Elevator Constructors, Local 18.

mination issued. Nevertheless, the judge found that requiring Otis to comply with the awards would be ''no less inconsistent with the Board's 10(k) determination and no less coercive . . . [than] if the awards included 'time-in-lieu' payments for the periods before *and* after the Board's 10(k) determination.'' The judge therefore concluded that the Respondents' filing and maintenance of the court petitions to confirm the arbitration awards violated Section 8(b)(4)(D) of the Act.[2] My colleagues adopt the judge's conclusion, stating that it makes no difference that the awards seek payment for work performed before the Board's 10(k) determination. I disagree.

The Board has recognized that a union's pursuit of work assignment grievances involving time-in-lieu claims before issuance of a 10(k) decision concerning the disputed work is not coercive and therefore does not violate Section 8(b)(4)(D). See *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89 (1988). The Board also has found unlawful the post-10(k) maintenance of a time-in-lieu grievance, or a lawsuit to enforce an arbitration award sustaining such a grievance, that is inconsistent with the 10(k) determination. Ibid. As the Board explained in *Laborers Local 261 (Skinner, Inc.)*, 292 NLRB 1035 (1989), a grievance or lawsuit is inconsistent with a 10(k) determination if it seeks ''to undermine the Board's 10(k) award and to coerce the Employer into reassigning to [the respondent's] members the work that the Board found had been properly assigned'' to other employees.

Under these principles, I would find that the arbitration awards at issue in this case are not inconsistent with the Board's 10(k) determination.[3] As the judge found no evidence that the arbitration awards that the Respondents sought to enforce covered work performed after the Board's 10(k) determination, the General Counsel has failed to show that enforcement of these awards would coerce Otis into reassigning the work contrary to the 10(k) determination. Otis' financial liability under the arbitration awards solely concerns work that had already been performed prior to issuance of the 10(k) determination. Thus, there is no basis for finding that the Respondents' efforts to enforce those awards would coerce Otis into reassigning the disputed work. Whether the work was reassigned or not would not affect Otis' liability under the arbitration awards.

Likewise, there is no danger that the Board's 10(k) determination would be undermined by allowing the the Respondents' court enforcement efforts to proceed. The Board has stated that its 10(k) determinations would be undermined if, confronted with inconsistent Board and arbitral decisions, ''an employer would be presented with a choice of either complying with the Board's decision and risking Section 301 damages, or complying with an arbitrator's decision which was contrary to the Board's determination.'' *Carpenters Local 33 (AGC of Massachusetts)*, 289 NLRB 1482, 1484 (1988). That is not the situation here. In this case, there is no evidence that the arbitration awards that the Respondents seek to enforce cover work performed after the Board's 10(k) award issued. Thus, Otis would not violate the 10(k) determination by making the time-in-lieu payments required by the arbitration awards. Nor would Otis incur greater liability under the arbitration awards by assigning work in accordance with the 10(k) determination. Consequently, as Otis could comply with the arbitration awards and the 10(k) determination simultaneously, Otis is not presented with a choice of complying with only one or the other. Therefore, allowing the Respondents to file and maintain their court petitions will not undermine the Board's 10(k) determination.

In finding the Respondents' court petitions to violate Section 8(b)(4)(D), my colleagues cite the principle that a Board 10(k) determination takes precedence over any conflicting arbitral award and contend that allowing the losing party in a 10(k) dispute to pursue payments for work the Board awarded to others necessarily subverts the 10(k) determination. These propositions, however, are inapplicable to the facts here. As noted above, there is no evidence that the arbitration awards cover work performed after the 10(k) determination issued. Therefore, allowing the Respondents to seek court enforcement of the arbitration awards does not subvert the 10(k) determination.

For the foregoing reasons, I would dismiss the complaint allegations that the Respondents' filing and maintenance of court petitions to confirm the arbitration awards violated Section 8(b)(4)(D).

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

[2] The judge also found that the Respondents failed to show that Otis had a collective-bargaining agreement with either of them. I would find, however, that, as the arbitration awards sustained Local 433's grievances against Otis under its contract with Local 433, the Respondents' petitions to obtain court confirmation of the awards were reasonably based.

[3] See my dissenting opinions in *Iron Workers Local 433 (Swinerton Co.)*, 308 NLRB 756 (1992); and *Roofers Local 30 (Gundle Construction)*, 307 NLRB 1429 (1992).

WE WILL NOT induce or encourage any individual employed by Otis Elevator Company, a subsidiary of United Technologies, Marnell Corrao Associates, Inc., or Dover Elevator Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or to perform any services, where an object thereof is to force or require Otis Elevator Company, a subsidiary of United Technologies or Dover Elevator Company to assign the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects in Los Angeles, California, to employees who are members of, or represented by Iron Workers Local 433, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, rather than to employees who are members of, or represented by, International Union of Elevator Constructors, Local 18.

WE WILL NOT in any manner, threaten, coerce, or restrain the above-named Employers, or any person engaged in commerce or in an industry affecting commerce, where the object thereof is to force or require Otis Elevator Company, a subsidiary of United Technologies, or Dover Elevator Company to assign the work of installing elevator fronts at the Avenue of the Stars and Manual Life Building projects in Los Angeles, California, to employees who are members of, or represented by Iron Workers Local 433, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, rather than to employees who are members of, or represented by, International Union of Elevator Constructors, Local 18.

WE WILL NOT maintain after March 21, 1990, a petition to confirm arbitration awards in the Superior Court of the State of California in and for the County of San Francisco a petition to confirm an arbitration award in the United States District Court for the Central District of California (Case No. 90–2919), and a cross-petition for confirmation of arbitration awards in *Otis Elevator Company, a subsidiary of United Technologies v. District Council of Ironworkers of the State of California and Vicinity, Ironworkers Union Local 433*, Case No. 90–2355 in the United States District Court for the Central District of California, for the purpose of enforcing the Board of Adjustment Decisions requiring Otis to pay monetary damages pursuant to the Board of Adjustment Decisions, with an object of forcing or requiring Otis Elevator Company, a subsidiary of United Technologies, to assign, contrary to the Board's Determination Of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects in Los Angeles, California, to employees who are represented by Iron Workers Local 433, affiliated with International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, rather than to employees who are members of, or represented by, International Union of Elevator Constructors, Local 18.

WE WILL withdraw the above-described petition and cross-petition for confirmation of arbitration awards and cease attempting to enforce the Board of Adjustment Decisions.

IRON WORKERS LOCAL 433, AFFILIATED WITH INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL–CIO

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain after March 21, 1990, a petition to confirm arbitration awards in the Superior Court of the State of California in and for the County of San Francisco, a petition for confirmation of arbitration award in the United States District Court for the Central District of California (Case No. 90–2919), and a cross-petition to confirm arbitration awards in *Otis Elevator Company, a subsidiary of United Technologies v. District Council of Ironworkers of the State of California and Vicinity, Ironworkers Union Local 433*, Case No. 90–2355 in the United States District Court for the Central District of California, requiring Otis to pay monetary damages pursuant to the Board of Adjustment Decisions, for the purpose of enforcing the Board of Adjustment Decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by the Respondent Local, rather than to employees represented by Local 18.

WE WILL withdraw the above-described petition to confirm and cross-petition to confirm arbitration awards and cease attempting to enforce the Board of Adjustment Decisions.

DISTRICT COUNCIL OF IRON WORKERS OF THE STATE OF CALIFORNIA AND VICINITY

Arthur G. Yuter, Esq., for the General Counsel.
Victor J. Van Bourg and *David A. Rosenfeld, Esqs. (Van Bourg, Weinberg, Roger & Rosenfeld)*, for the Respondents.

Dwight L. Armstrong Esq., (Allen, Matkins, Lleck, Gamble & Mallory), for the Charging Party Marnell Corrao.
Peter B. Robb (Proskauer Rose Goetz & Mendelsohn), for Charging Party Otis.
Charles O. Strahley Esq., (Putney, Twombly, Hall & Hirson), for the Charging Party Dover.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge. Upon charges filed in 1989[1] on August 6 and 13, September 22, and October 11 by Otis Elevator, a subsidiary of United Technologies (Otis), Marnell Corrao Associates, Inc. (Marnell Corrao), and Dover Elevator Company (Dover), and duly served on Iron Workers Local 433 (Respondent Local), and upon a charge filed on May 11, 1990 by Otis, and duly served on District Council of Iron Workers of the State of California and Vicinity (Respondent Council), the General Counsel of the National Labor Relations Board issued a second amended order consolidating cases, and second amended consolidated complaint on June 8, 1990, against the Respondents alleging that they had violated Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act (Act).

The amended consolidated complaint alleges that an object of the Respondents' conduct questioned in this case is to force or require employers Otis, Marnell Corrao, and Dover to assign the disputed work involved in this case to employees who are members of or represented by Respondent Local rather than to employees who are members of or represented by International Union of Elevator Constructors, Local 18, AFL–CIO (Local 18). The disputed work, as alleged in the amended consolidated complaint, is the installation of that portion of the elevator affixed to the building structure on each floor (the fronts) at the Excalibur Hotel and Casino in Las Vegas, Nevada (the Excalibur project), at the 1999 Avenue of Stars Building in Los Angeles, California (the Avenue of Stars project), and at the Manual Life Building in Los Angeles, California (Manual Life Building project).

The amended consolidated complaint alleges Respondent Local violated Section 8(b)(4)(i) and (ii)(D) of the Act by picketing the above-named projects on specified dates in September and October 1989, by making certain specified statements to management officials of Otis, Dover, Marnell Corrao and to the job superintendent of the Avenue of Stars project, and by engaging in this conduct with an object of forcing or requiring employers Otis, Marnell Corrao and Dover to assign the above-described disputed work to employees who are members of or represented by Respondent Local, rather than to employees who are members of or represented by Local 18.

The amended consolidated complaint also alleges that Respondent Local and Respondent Council violated Section 8(b)(4)(i) and (ii)(D) of the Act, when the Respondent Council on April 25, 1990, on its own behalf and on behalf of Respondent Local, filed a petition to confirm arbitration awards against Otis in San Francisco Superior Court, which petition, in part, sought to enforce a Board of Adjustment decision dated December 12, 1989. The complaint further alleges that an object of Respondents' filing of the aforesaid lawsuit is to force or require Otis to assign the disputed work involved in this case to employees who are members of or represented by Respondent Local, rather than to employees who are members of or represented by Local 18.

Lastly, the amended consolidated complaint alleges that since March 21, 1990 Respondent Local has failed and refused to honor and abide by the Board's March 21, 1990 Decision and Determination of Dispute,[2] which awarded the disputed work to employees represented by Local 18. The complaint further alleges that Respondent Local has continued to demand the disputed work despite this decision and has not notified the Board's Regional Director that it will refrain from forcing or requiring Otis, Marnell Corrao, and Dover to assign the disputed work to employees represented by Respondent Local by means proscribed by Section 8(b)(4)(D) of the Act.

Subsequent to the issuance of the second amended order consolidating cases, and second amended consolidated complaint, all of the parties to this proceeding entered into a stipulation of facts. The parties agreed to submit this proceeding, without a hearing, directly to an administrative law judge for recommended findings of facts, conclusions of law, and Order. The parties also agreed that the entire record in this case should consist of the following: the unfair labor practice charges filed; the second amended order consolidating cases, second amended consolidated complaint; and the stipulation of facts together with the exhibits attached thereto and the briefs of the parties.

On August 5, 1991, Acting Deputy Chief Administrative Law Judge Gordon J. Myatt issued an order assigning this matter to me for the issuance of a decision and set a time for the filing of the parties' briefs.

On the basis of the entire record in this case and having considered the briefs filed by the parties to this proceeding and the responses to my September 16, 1991 Order to Show Cause submitted by counsel for the General Counsel and Otis, I make the following

FINDINGS OF FACT

I. JURISDICTION

Otis, a New Jersey corporation, with headquarters in Farmington, Connecticut, and a district office in Glendale, California, is engaged in manufacturing, installation, and maintenance of elevators and escalators throughout California, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from points located outside California.

Marnell Corrao, a Nevada corporation, with an office and principal place of business in Las Vegas, Nevada, is engaged there as a contractor in the building and construction industry, where it annually purchases and receives goods and services valued in excess of $50,000 directly from points located outside Nevada.

Dover, a Delaware corporation, with an office and place of business in Las Vegas, Nevada, is engaged in the business of constructing, servicing, repairing, and modernizing elevators, escalators, and moving walkways in Nevada, where it annually purchases and receives goods and services valued

[1] All dates are in 1989 unless stated otherwise.

[2] *Iron Workers Local 433 (Otis Elevator),* 297 NLRB 964 (1990).

in excess of $50,000 directly from points located outside Nevada.

Otis, Marnell Corrao, and Dover are each engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS

Respondent Local, Respondent Council, and Local 18 each are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

Marnell Corrao is the general contractor for the construction of the Excalibur Hotel and Casino, a 4000-room structure with 38 elevators. Dover is the subcontractor for the installation of the elevators at the Excalibur project, including the installation of the part of the elevator affixed to the building structure on each floor, referred to herein as the elevator fronts. Dover's employees that install the elevator fronts are represented for collective-bargaining purposes by the International Union of Elevator Constructors (IUEC) for and on behalf of its local unions, including Local 18, and are covered by a collective-bargaining agreement between Dover and the IUEC on behalf of Local 18. Dover has no collective-bargaining agreement with Respondent Local.

On September 21, 1989,[3] Respondent Local began picketing at the main entrance to the Excalibur project with approximately 100 people. The signs read, ''Unfair. Dover Elevator is doing our work.'' The presence of the picketers had the effect of shutting down the job for the day. Respondent Local's steward, Tom Carney, told management officials of Marnell Corrao that the installation of elevator fronts was ironworkers' work and stated the picketing would cease and the employees would return to work, if Dover was removed from the job. The following day, September 22, Respondent Local's business agent Max Price visited the Excalibur project and told a Marnell Corrao management official that the installation of elevator fronts was ironworkers' work. The following week Price also told a management official of Dover that he intended to speak to the other trades employed at the Excalibur project, so that they would not cooperate with Dover. The picketing at the Excalibur project did not resume after September 21.

Otis is the elevator subcontractor at two Los Angeles, California projects; 1999 Avenue of Stars and the Manual Life Building projects. Otis employs its own employees to install the elevator fronts on the buildings at these projects. They are represented for collective-bargaining purposes by IUEC for and on behalf of Local 18. Otis' employees that install the elevator fronts on the buildings at these two projects are covered by a collective-bargaining agreement between Otis and IUEC, on behalf of Local 18. Otis has no collective-bargaining agreement with Respondent Local or Respondent Council covering Otis' employees who install the elevators at the Avenue of Stars or Manual Life Building projects.

There was mass picketing by Respondent Local between October 6 and October 9 at the Avenue of Stars project. Jim Butner, a business representative for Respondent Local, was present with the picketers. The picket signs stated, inter alia, ''Otis Elevator Unfair,'' ''Otis Elevator no contract with Ironworkers,'' and, ''If you want our work, we'll fight you for it.''

The day before the picketing began at the Avenue of Stars project, Butner, in a telephone conversation with Otis' Project Manager Pepin, stated he was very upset that Otis had elected to use elevator constructors and not ironworkers to install elevator fronts, and stated he would do anything he could to disrupt the job to protect the work for ironworkers. He also stated he had approached Chuck Bruce, the general contractor's job superintendent, and had told Bruce he was very upset that Otis elected to use elevator constructors to install the fronts and not ironworkers. As a matter of fact, Butner had spoken to Bruce that same day and demanded that the general contractor remove the elevator fronts from Otis' contract, so that he could put ironworkers to work on the job. When Bruce stated there was nothing he could do because Otis had the contract for installing the elevators, Butner replied by stating that if Bruce did not do anything Respondent Local, ''will have a picket sign up here Friday, we will shut this job down.''[4]

At the Manual Life Building project, Respondent Local picketed between October 13 and 18, with signs stating ''Otis Unfair Local 433'' and ''Otis Elevator Unfair/No agreement with Ironworkers.'' Butner was present with the picketers there as well.

On or about November 14 the Board's Regional Director served a notice of 10(k) hearing on all the parties to Cases 31–CD–313 through 31–CD–316.

Pursuant to the 10(k) notice, a 10(k) hearing was held on November 28 and 29. All the parties to the instant proceeding participated in and were represented at the 10(k) hearing, except for Respondent Council, which was not a party to that proceeding.

On March 21, 1990, the Board issued its Decision and Determination of Dispute in the 10(k) proceeding (297 NLRB 964) in which it found reasonable cause to believe that Respondent Local had violated Section 8(b)(4)(D) of the Act by picketing at the Excalibur, Avenue of Stars, and Manual Life Building projects, with an object proscribed by Section 8(b)(4)(D) of the Act. The Board awarded the disputed work to the employees of Dover and Otis represented by Local 18, after considering all of the relevant factors.

Respondent Local did not comply with that part of the Board's Decision and Determination of Dispute in the underlying 10(k) proceeding which required that it, ''notify the Regional Director for Region 31 in writing whether it will refrain from forcing the Employers, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.''

On or about November 8, Respondent Local requested a Board of Adjustment be convened pursuant to a collective-bargaining agreement between Respondent Council, Respondent Local, and several other local unions affiliated with Respondent Council, and an employer association, the Cali-

[3] All dates hereinafter refer to the year 1989, unless specified otherwise.

[4] Although there is some evidence that the picketers themselves indicated that the cause of the picketing was Otis' transfer of its two employees who were members of the Respondent Local from the Avenue of Stars project, Butner did not mention this in his conversation with either Pepin or Bruce.

fornia Ironworkers Employers Council, Inc. This collective-bargaining agreement is referred to herein as the California Iron Workers Agreement. Respondent Local requested that the Board of Adjustment be convened for the purpose of resolving two grievances against Otis, alleging, inter alia, ''Elevator men doing our work installing elevator fronts'' at the Manual Life Building and Avenue of Stars projects. These grievances were filed by Respondent Local prior to the issuance of the 10(k) notice of hearing on November 14 but after the filing of the unfair labor practice charges by Otis in Cases 31–CD–313 and 31–CD–314 on October 6 and 13, which caused the Regional Director to issue the 10(k) notice of hearing, insofar as it concerned Otis' assignment of the disputed work at the Manual Life Building and Avenue of Stars projects.

On about December 12 a hearing was held on the two above-described grievances, before a ''California Field Iron Workers Board of Adjustment,'' herein called the Board of Adjustment. Otis was not represented at the hearing.

On December 12 the Board of Adjustment found merit to both grievances. In its written decision, the Board of Adjustment concluded Otis had violated the California Iron Workers Agreement, as alleged in the grievances, and to remedy the grievances directed Otis to ''pay the top men on the out of work list for all hours worked on this job, plus fringe benefit contributions.''[5]

On April 25, 1990, Respondent Council on its own behalf and on behalf of Respondent Local, filed a ''Petition to Confirm Arbitration Awards'' against Otis in the Superior Court of the State of California in and for the County of San Francisco, herein sometimes referred to as the State petition to confirm. The State petition to confirm sought, in part, to enforce the December 12 decisions of the Board of Adjustment issued against Otis, which have been described supra.

After the removal of the above-lawsuit to the United States District Court for the Northern District of California, and its transfer to the United States District Court for the Central District of California, where it was docketed as Case No. 90-2919, Respondent Local on or about May 22, 1990, filed a ''Cross Petition for Conformation of Arbitration Award,'' herein sometimes called the Federal petition, seeking, in part, to enforce the December 12 Board of Adjustment decisions against Otis, described supra.[6] The lawsuit was docketed as Case No. 90-2355.

On December 20, 1990, the United States District Court for the Central District of California ordered that the above lawsuits, involving both the State and Federal petitions, be stayed pending final disposition of the matters pending before the National Labor Relations Board in the instant unfair labor practice proceeding.

B. *Discussion and Conclusions*

Cases 31–CD–313 through 31–CD–316

The unfair labor practice allegations of the second amended consolidated complaint pertaining to Respondent Local, which are encompassed by the charges filed by the Employers in Cases 31–CD–313 through 31–CD–316, charging Respondent Local with violating Section 8(b)(4)(D) of the Act, are based on the record developed in the underlying 10(k) proceeding, which was stipulated into evidence in this proceeding, plus the one additional stipulation that the Respondent Local has failed and refused to promise to comply with the Board's Decision and Determination of Dispute in the 10(k) proceeding.

The applicable principles of law which govern the disposition of these cases are well settled and may be stated briefly. Upon the filing of a charge alleging a violation of Section 8(b)(4)(D), the Board is required to suspend proceedings on the charge pending its resolution of the underlying jurisdictional dispute. *NLRB v. Plasterers Local 79*, 404 U.S. 116, 123–124 (1971). If it appears that an 8(b)(4)(D) charge has merit and that no voluntary method of settlement has been agreed upon, a hearing will be promptly directed under Section 10(k) of the Act under which the Board makes a determination of the dispute and an assignment of the work. During this time, proceedings on the 8(b)(4)(D) charge are held in abeyance. Board Rules and Regulations, Section 102.90. If, following the issuance of the Board's 10(k) determination and award of work, the charged union refuses to comply with the Board's assignment, as in the instant cases, the General Counsel will issue a complaint, as in the instant cases, alleging a violation of Section 8(b)(4)(D) of the Act, and the normal complaint procedures will ensue. *NLRB v. Plasterers Local 79*, 404 U.S. 116, 127 (1971). The Board may, on the basis of the evidence in that proceeding and in the prior 10(k) proceeding, find a violation of Section 8(b)(4)(D) of the Act. *NLRB v. Iron Workers Local 433*, 549 F.2d 634, 638-639 (9th Cir. 1977). In short, the ''unfair [labor] practice proceeding [is] a further or subsequent stage of the same controversy made necessary because [a] respondent [union] failed to comply with the 10(k)'' award. *NLRB v. Longshoremen ILA Local 1576*, 409 F.2d 709, 710 (5th Cir. 1969).

Section 8(b)(4)(i) and (ii)(D) of the Act provides:

> 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> 4(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise han-

[5] To remedy its grievances, Respondent Local had asked that the Board of Adjustment require Otis to pay wages and fringe benefits for all hours until the jobs were completed.

[6] The language in this sentence was taken virtually verbatim from par. 15 of the parties' stipulation of Facts. However, par. 16 of the Stipulation of Facts states that the Federal petition was attached to the Stipulation as Exh. 5(a). Exh. 5(a) is identified on its face as a ''copy'' of the Federal petition, names Respondent Council and Respondent Local in the caption as Respondents, and states it was being filed by Respondent Council and is signed by Attorney Victor J. Van Bourg on Respondent Council's behalf. The parties to this proceeding at par. 16 of the stipulation of facts, stipulated that all matters filed by Respondent Council or Respondent Local in support of the Federal petition, except those referring to the change of venue, were attached to the stipulation as Exh. 5(c). Exh. 5(c), which was submitted to me by Respondents' attorney by letter to me dated August 28, 1991, per agreement of the parties, contains what is identified as the ''Original'' of the Federal petition, names Respondent Council and Respondent Local in the caption as Respondents, and states that it was filed by Respondent Local, and is signed by Attorney Victor J. Van Bourg, on behalf of Respondent Local.

> dle or work on any goods, articles, materials, or to perform any services; or
>
> 4(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is–
>
> . . . .
>
> (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining of representative for employees performing such work.

Thus, Section 8(b)(4)(D) makes it an unfair labor practice for a labor organization to strike or to picket or to threaten to do so ''in order to force or require an employer to assign particular work to one group of employees rather than to another, unless the employer is refusing to honor a representation order of the Board.'' *NLRB v. Plasterers Local 79*, 404 U.S. 116, 123 (1971).[7] It is also settled that, ''when congress used 'coercion' in [Section 8(b)(4)(D)] it did not intend to proscribe only strikes or picketing, but intended to reach any form of economic pressure of a compelling or restraining nature.'' *AGC of California v. NLRB*, 514 F.2d 433, 438-439 (9th Cir. 1975).

The stipulated facts, set forth supra, establish Respondent Local violated Section 8(b)(4)(i) and (ii)(D) by picketing the Excalibur project on September 21, and on the same day violated Section 8(b)(4)(ii)(D) by threatening the project's general contractor that the picketing would continue, and shortly thereafter further violated Section 8(b)(4)(ii)(D) by threatening the project's contractor who employed the elevator constructors that it would disrupt its work at the project. Thus, on September 21 Respondent Local picketed the Excalibur project and on the same day, through its Steward Carney, threatened management officials of Marnell Corrao that the picketing would continue unless Dover, the contractor who employed the elevator constructors, was removed by Marnell Corrao from the project, and then, the next week, through its Business Representative Price, Respondent Local told a management official of Dover that Respondent Local would talk to the other trades employed at the project so that they would not cooperate with Dover. That an object of Respondent Local's aforesaid threats and picketing was to force or require Dover and/or Marnell Corrao to assign the work of installing the elevator fronts to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18, is revealed by the following: The picket signs used by the Respondent Local stated, ''Dover Elevator is doing our work''; contemporaneous with the picketing, Respondent Local's steward Carney told management officials of Marnell Corrao that the installation of elevator fronts was ironworkers' work and that the picketing would cease if Dover was removed from the project by Marnell Corrao; and the day after the picketing, Respondent Local's business representative Price visited the project and informed management officials of Marnell Corrao that the installation of elevator fronts was ironworkers' work. It is for the aforesaid reasons that I find Respondent Local violated Section 8(b)(4)(i) and (ii)(D) by picketing the Excalibur project on September 21, violated Section 8(b)(4)(ii)(D) on September 21 by threatening Marnell Corrao that the picketing would continue, and on or about September 28 violated Section 8(b)(4)(ii)(D) by threatening to disrupt Dover's work at the project.[8]

I find that on October 5 Respondent Local threatened to picket the Avenue of Stars project and to disrupt the work there, and that between October 6 and 9 picketed that project and that an object of all this conduct was to force or require Otis to assign the work of installing elevator fronts to the employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18, thereby violating Section 8(b)(4)(i) and (ii)(D) of the Act. This conclusion is warranted by the following stipulated facts: Respondent Local picketed the Avenue of Stars project between October 6 and 9 with picket signs stating, inter alia, ''Otis Elevator Unfair,'' ''Otis Elevator no contract with Ironworkers,'' and ''If you want our work, we'll fight you for it''; on October 5 Respondent Local, through its Business Agent Butner, informed Otis' project manager Pepin that he was upset because Otis had elected to employ elevator constructors and not ironworkers to install the elevator fronts on the project and threatened to do anything he could to disrupt the job to protect the work for the ironworkers; and, on October 5 Butner threatened the general contractor's job superintendent Bruce that Respondent Local would picket the Avenue of Stars project and shut the project down, unless Bruce removed the elevator fronts from Otis' contract, so that ironworkers could be employed on the job. Clearly, these facts establish, and I find, Respondent Local violated Section 8(b)(4)(i) and (ii)(D) by picketing the Avenue of Stars project between October 6 and 9, and violated Section 8(b)(4)(ii)(D) on October 5 by threatening the project superintendent of the project's general contractor, that it would picket the project, and by threatening Otis' project manager that it would disrupt the work at the project.

Lastly, I find that when Respondent Local's picketing of the Manual Life Building project between October 13 and October 18 with signs stating ''Otis Unfair Local 433'' and ''Otis Elevator Unfair/No agreement with Ironworkers,'' is viewed in the context of Respondent Local's above-described conduct directed against Otis' use of elevator constructors at the Avenue of Stars project, I find that an object of Respond-

[7] A violation of Sec. 8(b)(4) is established where ''an object,'' although not necessarily ''the sole object,'' of the union's threat or picketing is to obtain the disputed work. *NLRB v. Denver Building Trades Council*, 341 U.S. 675, 688–689 (1951); *Plumbers Local 195 (Gulf Oil)*, 275 NLRB 484, 485 fn. 7 (1985) (''one proscribed object is sufficient to bring the [union's] conduct within the coverage of Sec[tion] 8(b)(4)(D) even if a lawful purpose was also shown to exist'').

[8] Respondent Local contends that the complaint's unfair labor practice allegations concerning the Excalibur project must be dismissed because there is no evidence Respondent Local has acted inconsistently with the Board's 10(k) determination, as to that project. Respondent Local cites no authority for this novel proposition and there is none. Rather, Respondent Local's admitted refusal to promise to comply with the Board's 10(k) determination was sufficient to trigger the issuance of the complaint herein. See *Longshoremen ILWU Local 6 (Golden Grain)*, 289 NLRB 1 fn. 3, and cases cited therein (1988).

ent Local's picketing of the Manual Life Building project between October 13 and 18, like its picketing at the Avenue of Stars project between October 6 and 9, was to force or require Otis to assign the work of installing elevator fronts to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18. It is for this reason that I further find Respondent Local's picketing of the Manual Life Building project violated Section 8(b)(4)(i) and (ii)(D) of the Act.

In concluding Respondent Local violated Section 8(b)(4)(D) by its aforesaid conduct at the Avenue of Stars and Manual Life Building projects, I considered Respondent Local's argument that the Board's 10(k) determination ''is flawed'' as to those two projects because there is a collective-bargaining agreement between Otis and Respondent Local, which by its terms and conditions supports Respondent Local's claim for the disputed work performed by Otis' employees at those two projects. This contention lacks merit because, as I have found supra, Otis did not have a collective-bargaining agreement with Respondent Local covering the employees who performed the disputed work. My reasons for this conclusion are set forth below.

In connection with the grievances it filed against Otis with the California Field Ironworkers Board of Adjustment on November 8, 1989, and in connection with its subsequent lawsuits to secure compliance with the Board of Adjustment's December 12, 1990 decisions finding merit to those grievances, Respondent Local took the position that Otis' employees who performed the disputed work at the Avenue of Stars and the Manual Life Building projects were covered by the California Iron Workers Agreement because their employer, Otis, had agreed to be bound by the work rules and grievance/arbitration provisions of that agreement, by virtue of a letter dated October 27, 1977, purportedly sent to Respondent Council by a representative of Otis. However, during the hearing held in the 10(k) proceeding herein, the Respondent Local did not present this evidence. Nor during the 10(k) hearing did Respondent Local dispute the evidence presented by Otis which established that Otis' employees, who were installing the elevator fronts at the Avenue of Stars and Manual Life Building projects were not covered by a collective-bargaining agreement between Otis and Respondent Local, but were represented by the IUEC and covered by a collective-bargaining agreement by and between Otis and the IUEC on behalf of Local 18.[9] Thus, the Board in its Decision and Determination of Dispute concluded that, ''Otis has a collective-bargaining agreement with Elevator Constructors, but not with Iron Workers.'' 297 NLRB 964. I note that the question of whether Otis has a collective-bargaining agreement with either Respondent Local or Local 18 was an essential part of the 10(k) proceeding inasmuch as in making an affirmative award of the disputed work in a 10(k) proceeding, one of the factors traditionally considered by the Board is whether there are any collective-bargaining agreements between the parties to the dispute which covered the work in dispute. Indeed, at the start of the 10(k) hearing herein, the hearing officer alerted the parties to the significance of this factor, yet Respondent Local failed to present any evidence of an agreement between itself and Otis covering Otis' employees who were performing the disputed work.

Moreover, the parties to this unfair labor practice proceeding, as a part of this proceeding, did not stipulate to the authenticity of either the October 27, 1977 letter relied on by Respondents in the lawsuit to establish that Otis was a party to a collective-bargaining agreement with Respondent Local covering the disputed work. The October 27, 1977 letter and the California Iron Workers Agreement were stipulated into evidence in this proceeding as being included among the documents submitted to the courts by the Respondents and Otis in connection with Respondents' efforts to have the courts confirm the Board of Adjustment's December 12, 1990 decisions.[10] However, Respondents made no effort in this proceeding to litigate the authenticity or the meaning of the October 27, 1977 letter, nor did Respondents otherwise attempt to litigate in this proceeding whether Otis was legally obligated to abide by the terms of the California Iron Workers Agreement.

In summation, I find that the stipulated record herein, which includes the record in the 10(k) proceeding, establishes that the only collective-bargaining agreement Otis has with a labor organization covering Otis' employees who performed the work of installing the elevator fronts at the Avenue of Stars and Manual Life Building projects is Otis' agreement with the IUEC, and that Otis has no agreement with either of the Respondents covering those employees.[11]

Case 31–CD–319

The ultimate questions encompassed by the allegations of the amended consolidated complaint in Case 31–CD–319 are as follows: whether on April 25, 1990, Respondents violated Section 8(b)(4)(ii)(D) of the Act when, on behalf of Respondent Local, Respondent Council filed a civil suit against Otis in the Superior Court for the State of California, seeking to enforce two arbitration decisions concerning the disputed work involved in Cases 31–CD–313 and 31–CD–314, after the Board in those cases had issued its 10(k) award assigning the disputed work to those employees of Otis represented by

[9] The undenied testimony of Otis' western field operations manager Robert Chernis, the undenied testimony of Otis' construction superintendent Ramon Ramos, and the undisputed fact that Respondent Local picketed Otis at the Avenue of Stars and Manual Life Building projects with signs stating that Otis had ''no contract with Ironworkers,'' supports the conclusion that Otis' employees who were installing the elevator fronts at the two Los Angeles projects were not covered by a collective-bargaining agreement between Otis and Respondent Local, but were covered by an agreement between Otis and the IUEC on behalf of Local 18.

[10] I note that the documents filed in court by Otis in connection with the Respondents' lawsuits, which were stipulated into evidence in this proceeding as being included among the documents submitted to the courts by Otis and Respondents, show that Otis denied Respondents' allegations that during the time material Otis and Respondents were party to the California Iron Workers Agreement.

[11] In view of my conclusion that in the instant unfair labor practice proceeding Respondents failed to establish that the elevator front installers employed by Otis at the Avenue of Stars and Manual Life Building projects were covered by the California Iron Workers Agreement, even though Respondents were not precluded from establishing this, I need not decide whether this issue involved a preliminary matter that was determined in the 10(k) proceeding and may not be relitigated. See *Longshoremen ILWU Local 6 (Golden Grain)*, 289 NLRB 1 (1988), and *Laborers Local 721 (Hawkins & Sons)*, 294 NLRB 166 (1989).

Local 18, rather than to employees represented by Respondent Local; and, whether Respondent Local further violated Section 8(b)(4)(ii)(D) when, after Respondent Council's lawsuit was removed to the United States District Court for the Central District of California, on May 22, 1990, Respondent Local filed a civil suit in that court, on its own behalf against Otis, to enforce the aforesaid arbitration decisions. The pertinent facts are briefly summarized.

On March 21, 1990, the Board issued its 10(k) Decision and Determination of Dispute in Cases 31–CD–313 and 31–CD–314 in which it determined that the employees of Otis represented by Local 18 are entitled to perform the installation of elevator fronts at the Avenue of Stars and Manual Life Building projects and that Respondent Local is not entitled by means proscribed by Section 8(b)(4)(D) to force Otis to assign this work to employees represented by Respondent Local.

Previously, on November 8, 1989, Respondent Local had filed two grievances under the California Iron Workers Agreement charging Otis with violating Section 5 of that agreement[12] by employing elevator constructors rather than ironworkers to install the elevator fronts on the Avenue of Stars and Manual Life Building projects, and to remedy this alleged contract violation asked for ''wages and fringe benefits for all hours'' until the projects were completed.

On December 12 Respondent Local's grievances against Otis were heard under the California Iron Workers Agreement's grievance/arbitration provisions by a Board of Adjustment, which on the same day issued its decisions finding merit to both grievances, and to remedy the grievances directed Otis to ''pay the top men on the out of work list for all hours worked'' at the Avenue of Stars and Manual Life Building projects, ''plus fringe benefit contributions.''

On April 25, 1990, 1 month after the Board's issuance of its 10(k) determination, the Respondent Council, on its own behalf and on behalf of Respondent Local, filed a ''Petition to Confirm Arbitration Awards'' in the Superior Court for the State of California seeking the court's enforcement of the December 12, 1990 decisions of the Board of Adjustment issued against Otis, which have been previously described.

On May 22, 1990, after Otis succeeded in having Respondent Council's lawsuit removed to the United States District Court for the Central District of California, Respondent Local filed in that court a ''Cross Petition for Confirmation of Arbitration Award'' seeking the court's enforcement of the December 12, 1990 decisions of the Board of Adjustment against Otis.[13]

As of the date of the parties' stipulation in the instant case both of the above-described lawsuits—Respondent Council's, docketed by the court as Case No. 90-2919 and Respondent Local's, docketed by the court as Case No. 90-2355—were still pending, inasmuch as the court on December 12, 1990, ordered that both of these lawsuits be stayed pending final disposition of the instant unfair labor practice proceeding.

I am of the view that this case is controlled by the decisions of the Board and courts in *Laborers Local 261 (Skinner, Inc.)*, 292 NLRB 1035 (1989), *Longshoremen ILWU Local 32 v. Pacific Maritime Assn. (Weyerhaeuser Co.)*, 773 F.2d 1012, 1015–1016 (9th Cir. 1985), enfg. 271 NLRB 759 (1984), and *Longshoremen ILWU v. NLRB (Sea-Land Service)*, 884 F.2d 1407, 1413–1414 (D.C. Cir. 1989).[14] It is for the reasons expressed by the Board and the courts in those decisions that I find Respondents violated Section 8(b)(4)(D) of the Act by filing and maintaining their civil lawsuits seeking, on behalf of Respondent Local, to confirm the Board of Adjustment's December 12, 1990 decisions finding merit to Respondent Local's grievances concerning the disputed work herein and awarding Respondent Local's members payment of wages and fringe benefits in lieu of the disputed work.

In *Skinner, Inc*. the Board found that after the Board had issued its 10(k) award assigning the disputed work to employees of the employer represented by IBEW Local 202 rather than to employees represented by the respondent unions, the respondent unions violated Section 8(b)(4)(D) when they continued to maintain a civil suit to enforce an arbitration award awarding respondent unions' members the payment of wages and fringe benefits in lieu of the disputed work.

In *Weyerhaeuser Co*. the Board held that a union violated Section 8(b)(4)(D) by pressing a contractual grievance to obtain time-in-lieu payments for disputed work that its members did not perform because the employer, consistent with the Board's prior 10(k) award, assigned that work to another group of employees whom the union does not represent.

In *Sea-Land*, a case similar to *Weyerhaeuser Co*., the court rejected the union's contention that the filing of a time-in-lieu grievance to challenge Sea-Land's assignment of certain container-handling work outside the marine container yard to its Teamsters-represented employees—consistent with the Board's prior 10(k) award—was not coercion within the meaning of Section 8(b)(4)(D). 884 F.2d at 1413–1414. The court viewed the union's contention as ''implicitly rais[ing] the issue of which source of law takes precedence: the Board's authority under [S]ection 10(k) or the [union's] rights under its contract?'' and held, in agreement with the Board, that ''the [S]ection 10(k) award trumps the collective bargaining agreement.'' 884 F.2d at 1413. After Sea-Land assigned the disputed work to the Teamsters pursuant to the Board's 10(k) award, the union obtained a favorable arbitra-

[12] Sec. 5 of the California Iron Workers Agreement provides, in substance, that the employer signatories to the agreement are obligated to hire their employees whose work is covered by the agreement through the hiring hall maintained by the Respondent Local, when doing business within Respondent Local's geographic jurisdiction.

[13] Respondents in their brief assert that Respondent Local filed its cross-petition in response to Otis' cross-petition to vacate arbitration awards. The record reveals Respondent Local's cross-petition is dated May 22, 1990, and was filed with the court on May 24, 1990, whereas Otis' ''Response to Petition to Confirm Awards and Cross-Petition to Vacate Arbitration Awards'' filed in Case No. 90-2919 is dated June 7, 1990, and was filed with the court on June 8, 1990. If I have erred and Otis in fact filed a petition to vacate prior to Respondent Local's cross petition to confirm, it is clear from the record that Respondent Local's cross-petition to confirm was not filed as a response to Otis' petition to vacate, for the response to Otis' petition to vacate consisted of the ''answers'' of the Respondents to the petition to vacate. Moreover, the contents of Respondent Local's cross-petition show it was not filed as a response to the petition to vacate, but was intended to be a new action instituted by a new party to the proceeding and was docketed as such by the court as Case 90-2355.

[14] See also *Longshoremen ILWU Local 7 (Georgia Pacific)*, 273 NLRB 363, 367 (1984), modified on other grounds 291 NLRB 89 (1988), review denied 892 F.2d 130 (D.C. Cir. 1989).

tion award against Sea-Land for wages its members lost when they did not perform that work. The Board concluded that the union's conduct was a collateral attack on its 10(k) award and therefore, unlawful coercion. The court agreed that ''the Board's interpretation [of Section 8(b)(4)(D)] is indeed reasonable; it may even be inevitable.'' 884 F.2d at 1414. As the court explained, if the union ''were entitled to assert contract claims against Sea-Land, in contravention of the Board's [S]ection 10(k) award, the very purpose of Section 10(k)—to authorize the Board to resolve the jurisdictional dispute—would be totally frustrated. . . . [W]hatever the union's motivation and no matter how persuasive its contractual case, a union cannot force an employer to choose between a Board [S]ection 10(k) award and a squarely contrary contract claim.'' 884 F.2d at 1414.

In the instant case, the Board issued an award under Section 10(k) of the Act awarding certain disputed work to employees of Otis who were represented by Local 18, rather than to employees who were members of or represented by Respondent Local. That decision put Respondent Local on notice there was no longer a reasonable basis for the filing or maintaining of a lawsuit designed to confirm a contrary contractual arbitration award issued prior to the Board's 10(k) determination. Thus, I find that by filing and maintaining the lawsuits herein on behalf of the Respondent Local, after the Board had issued its 10(k) determination, Respondents sought to undermine the Board's 10(k) award and to coerce Otis into reassigning to Respondent Local's members the work that the Board found had been properly assigned by Otis to employees represented by Local 18.

In their posthearing brief Respondents raise the following defenses to the violations found herein: (1) under the rationale of *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), Respondents are not foreclosed from seeking a judicial determination of the validity of the Board of Adjustment decisions especially, where, as here, there is no evidence Respondents seek to obtain an award for ''payment in lieu'' which covers work performed by Otis' employees after the Board's March 21, 1990 10(k) determination; (2) Respondent Local's civil suit to confirm the Board of Adjustment decisions herein, the Local's May 24, 1990 ''Cross Petition for Confirmation of Arbitration Award,'' did not violate Section 8(b)(4)(D) because the suit was filed in response to Otis' ''Cross Petition to Vacate Arbitration Awards'' and thus ''is in the nature of an answer to [Otis'] action''; and (3) Respondent Council was not a party to the Board's 10(k) determination, thus, in view of the language of Section 10(k) of the Act, ''absent a 10(k) proceeding in which the [Respondent Council] was involved, there is no basis upon which to find an 8(b)(4)(D) violation against the [Respondent Council].'' I considered and rejected these defenses for the reasons below.

As I have found supra, Respondent Local's May 24, 1990 cross-petition for confirmation of arbitration award was not, as urged by Respondent Local, a response to an action taken by Otis. In any event, even if it can be viewed as a response to an action taken by Otis, the cross-petition filed by Respondent Local sought the confirmation of an arbitration award which was in conflict with the Board's 10(k) determination.

Bill Johnson's Restaurants v. NLRB, 461 U.S. 731 (1983), does not alter the rule of *Carey v. Westinghouse*, 375 U.S. 261 (1964), that individual arbitration decisions must be subordinated to the Board's 10(k) award. For this reason, a suit that is inconsistent with a 10(k) award may be enjoined because it seeks to achieve an objective which is illegal under Federal law and therefore lacks a ''reasonable basis'' within the meaning of *Bill Johnson's*, 461 U.S. at 737–738, 743, fn. 5. See *Longshoremen ILWU Local 7 (Georgia Pacific)*, 273 NLRB 363, 367 (1984), modified on other grounds 291 NLRB 89 (1988), review denied 892 F.2d 130 (D.C. Cir. 1989); *Longshoremen ILWU Local 32 v. Pacific Maritime Assn.*, 773 F.2d at 1015–1016; *Longshoremen ILWU Local 13 v. NLRB (Sea-Land Service)*, 884 F.2d at 1414. As I have found supra, this is exactly the situation in the instant case.

The law is settled that ''time-in-lieu'' grievances constitute unlawful coercion within the meaning of Section 8(b)(4)(ii)(D) of the Act. E.g., *Carpenters v. C. J. Montag & Sons, Inc.*, 335 F.2d 216, 221 (9th Cir. 1964); *NLRB v. Longshoremen ILA Local 1291 (Pocahontas Steamship)*, 368 F.2d 107, 110 (3d Cir. 1966); *Pepper Construction Co. v. Operating Engineers Local 150*, 749 F.2d 1242, 1247 (7th Cir. 1984); *ILWU v. NLRB (Sea-Land Service)*, 884 F.2d 1407, 1414 (D.C. Cir. 1989), enfg. 290 NLRB 616 (1988); *Laborers Local 261 (Skinner, Inc.)*, 292 NLRB 1035, 1039 (1989). The fact that there is no evidence in the instant case that Respondents seek to confirm an award for ''payment-in-lieu'' which covers work performed after the Board's 10(k) determination does not warrant a different result.[15] I will not presume that the disputed work was completed entirely before the Board's 10(k) determination. In any event, Respondents offer no reasoning for the significance of the lack of evidence that the arbitration awards would require Otis to make ''time-in-lieu'' payments for the period postdating the Board's 10(k) determination.[16] I am unable to think of any obvious reason. Quite the opposite, I am persuaded that even if the arbitration awards in the instant case will in fact encompass only the period which pre-dated the Board's 10(k) determination, because the disputed work involved was completed prior to the issuance of the 10(k) determination, I am persuaded that requiring Otis to comply with those awards will be no less inconsistent with the Board's 10(k) determination and no less coercive within the meaning of Section 8(b)(4)(ii)(D), as it would have been if the awards included ''time-in-lieu'' payments for the periods before and after the Board's 10(k) determination.

Respondent Council's 10(k) defense—its contention that it may not be charged with violating Section 8(b)(4)(D) because it was not a party to the 10(k) proceeding held in Cases 31–CD–313 through 31–CD–316, and no such pro-

[15] The Board of Adjustment decisions herein that Respondents are asking the court to confirm, awarded ''time-in-lieu'' payments for the duration of the disputed work being performed on the Avenue of Stars and Manual Life Building projects. There is no evidence whether or not this work was completed prior to the Board's 10(k) determination.

[16] Respondents in their brief argue that in view of the court's reasoning in *Bill Johnson's Restaurants*, ''the Board cannot find that the pursuit of litigation after the notice of 10(k) is a violation of the Act'' especially, where as in the instant case, ''*there is no evidence that the Union seeks to obtain any award for payments-in-lieu, after the Board's Notice and Determination of Dispute in March 1990*.'' Respondents offer no case authority or rationale in support of this assertion.

ceeding has been held in the instant case—lacks merit because Section 10(k) of the Act did not require that the Board's Regional Director, under the circumstances of this case, make a 10(k) determination in the instant case (Case 31–CD–319), as a condition of issuing the amended consolidated complaint charging Respondent Council with violating Section 8(b)(4)(D). Section 10(k),[17] in pertinent part, requires that ''[w]henever it is charged that any person has [violated Section 8(b)(4)(D)] the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen.'' This is exactly what the Board has done in this case. The Board directed a 10(k) hearing in Cases 31–CD–313 through 31–CD–316 and determined in that proceeding the dispute out of which Respondent Council's unfair labor practice has arisen. Respondent Council was not a party to the 10(k) proceeding because it was not claiming the disputed work for itself. The only labor organizations that have claimed the disputed work have been Local 18 and Respondent Local. Respondent Council's lawsuit does not claim the disputed work for Respondent Council or its employee-members or for employees it represents. Rather, Respondent Council's lawsuit, which was filed on behalf of Respondent Local, asks the court to confirm arbitration decisions which are based on contractual grievances filed by Respondent Local on behalf of Respondent Local's members and which awarded the members of Respondent Local time-in-lieu payments for the work of installing elevator fronts that they lost because Otis assigned that work to Local l8, rather than to Respondent Local's members. This was the work that the Board in its 10(k) determination concluded that the employees of Otis represented by Local 18, rather than Respondent Local's members, were entitled to perform. In view of these circumstances, when the Board's Regional Director named Respondent Council as a Respondent in this case, even though it was not a party to the 10(k) determination and even though no 10(k) determination was made in the instant case, the Board's Regional Director complied with the requirements of Section 10(k), that the Board ''hear and determine the dispute out of which such unfair labor practice shall have arisen.''

Alternatively, I reject Respondent Council's 10(k) defense because in filing and maintaining the ''Petition to Confirm Arbitration Awards'' the Respondent Council acted as Respondent Local's agent. As described supra, the Respondent Council filed and maintained ''The Petition to Confirm Arbitration Awards'' on behalf of Respondent Local as well as on behalf of itself. Since Section 8(b)(4)(D) of the Act provides that ''it shall be an unfair labor practice for a labor organization *or its agents*'' to engage in conduct which violates Section 8(b)(4)(D), it was sufficient for the Board's Regional Director, under the circumstances, to charge Respondent Council with having violated Section 8(b)(4)(D) when it filed the petition, even though Respondent Council had not been a party to the Board's 10(k) determination. The Board's Regional Director did not act inappropriately because the Respondent Council's principal, the Respondent Local, on whose behalf it had filed the petition, had participated in and been a party to the Board's 10(k) determination awarding the disputed work covered by Respondent Council's lawsuit.[18]

CONCLUSIONS OF LAW

1. Otis, Marnell Corrao, and Dover are each employers engaged in commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

2. Respondent Local, Respondent Council, and Local 18 are each labor organizations within the meaning of Section 2(5) of the Act.

3. By picketing the Excalibur project on September 21, by threatening Marnell Corrao on September 21 that the picketing would continue, and by threatening Dover on or about September 28 to disrupt Dover's work at the Excalibur project, and by engaging in the aforesaid conduct with an object of forcing or requiring Dover to assign the work of installing elevator fronts at the Excalibur project to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18, Respondent Local violated Section 8(b)(4)(i) and (ii)(D) of the Act.

4. By picketing the Avenue of Stars project between October 6 and 9, by threatening the project's general contractor on October 5 that it would picket that project, and by threatening Otis on October 5 that it would disrupt work at the project, and by engaging in the aforesaid conduct with an object of forcing or requiring Otis to assign the work of installing elevator fronts at the Avenue of Stars project to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18, Respondent Local violated Section 8(b)(4)(i) and (ii)(D) of the Act.

5. By picketing the Manual Life Building project between October 13 and October 18 with an object of forcing or requiring Otis to assign the work of installing elevator fronts at the Manual Life Building project to employees who are members of, or represented by Respondent Local, rather than to employees who are members of, or represented by Local 18, Respondent Local violated Section 8(b)(4)(i) and (ii)(D) of the Act.

6. By Respondent Council's filing, on behalf of itself and Respondent Local, of a petition to confirm arbitration awards in the Superior Court of the State of California in and for the County of San Francisco and by maintaining that lawsuit in the United States District Court of the Central District of California, for the purpose of enforcing the Board of Adjustment decisions requiring Otis to pay monetary damages pur-

[17] Sec. 10(k) of the Act states:

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of [8(b)(4)(D) of the Act] the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within 10 days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

[18] The obvious reason why Respondent Council acted as Respondent Local's agent in filing the petition to confirm arbitration awards is that the awards it was asking the court to confirm were based on grievances filed by Respondent Local and awarded ''time-in-lieu'' payments to members of the Respondent Local. In short, Respondent Council was seeking to enforce the arbitration awards for the benefit of Respondent Local.

suant to the Board of Adjustment decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by Respondent Local, rather than to employees represented by Local 18, the Respondents have violated Section 8(b)(4)(ii)(D) of the Act.

7. By filing and maintaining a cross-petition for confirmation of arbitration award in the United States District Court for the Central District of California, for the purpose of enforcing the Board of Adjustment decisions requiring Otis to pay monetary damages pursuant to the Board of Adjustment decisions, with an object of forcing or requiring Otis to assign, contrary to the Board's Decision and Determination of Dispute in 297 NLRB 964 (1990), the work of installing elevator fronts at the Avenue of Stars and Manual Life Building projects to the employees who are represented by the Respondent Local, rather than to employees represented by Local 18, Respondent Local has violated Section 8(b)(ii)(D) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall recommend an order requiring them to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

In order to dissipate the effect of the Respondents' unfair labor practices, I shall recommend an order requiring the Respondents to cease and desist from prosecuting its above-described lawsuits against Otis, and I shall require the Respondents to withdraw those lawsuits.

[Recommended Order omitted from publication.]